
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LEASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that state agricultural
2 lands are a key resource that can be used to meet the State's
3 goals for economic diversification and food self-sufficiency.
4 In order to support farmers on these lands, the State subsidizes
5 lessees by providing the leases below market rates and, in some
6 cases, providing lower-cost agricultural water. The State
7 invests in training new farmers, but these farmers often
8 experience difficulty in obtaining affordable land to farm after
9 completing their training. State agricultural land that would
10 otherwise be available to prospective farmers may be tied up in
11 long-term leases that are not productive. For example, the land
12 may be used primarily as a residence, or a significant portion
13 of the land may be unused or used for non-agricultural purposes
14 despite being suitable for farming.

15 In addition, lessees who obtain a state agricultural lease
16 in high-demand locations can convert their lease into a windfall
17 profit above and beyond their investment in the property. This



1 windfall profit is an unintended transfer of wealth from the
2 State to individual lessees. This situation also causes the
3 transfers of leases to the highest bidder, who may or may not be
4 the farmers best able to use the land for production.

5 The legislature further finds that state agricultural lands
6 should not remain in the possession of lessees or successors to
7 lessees who are unable to farm the land productively according
8 to the plan for which the original lease was granted. In those
9 cases, such leases should be terminated.

10 The purpose of this Act is to update certain state non-
11 agricultural park leasing statutes to maximize the benefit to
12 the State of these lands and to help the State achieve its
13 economic and food production goals.

14 SECTION 2. Section 166E-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§166E-5 Extension of qualified and encumbered non-**
17 **agricultural park lands transferred to and managed by the**
18 **department.** Notwithstanding chapter 171[7] and except as
19 provided in section 166E-8, the board shall establish criteria
20 and rules to allow the cancellation, renegotiation, and
21 extension of transferred encumbrances by the department.



1 Notwithstanding any law to the contrary, qualified and
2 encumbered non-agricultural park lands transferred to the
3 department shall not have the respective length of term of the
4 lease or rents reduced over the remaining fixed term of the
5 applicable encumbrances."

6 SECTION 3. Section 166E-8, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[+]§166E-8[+] **Disposition.** (a) Any provision of this
9 chapter to the contrary notwithstanding, the department may
10 dispose of:

- 11 (1) Public lands and related facilities set aside and
12 designated for use pursuant to this chapter; and
13 (2) Other lands and facilities under the jurisdiction of
14 the department pursuant to section 166E-9 and
15 notwithstanding chapter 171,
16 by negotiation, drawing of lot, conversion, or public
17 auction[-]; provided that for transfers and extensions of leases
18 issued on or after the effective date of this Act, the
19 department shall first conduct a public notice to solicit
20 interested applicants to a conditional sealed bid process open
21 to all qualified applicants, subject to cancellation upon



1 withdrawal of the request for transfer or extension. For the
2 purposes of this section, in awarding a lease through the sealed
3 bid process, the department shall select the best-suited
4 applicant in terms of meeting the department's mission, whether
5 the applicant is an existing or prospective lessee. If there is
6 no interested and qualified applicant other than the current
7 lessee or the intended transferee identified by the current
8 lessee, the department may extend or transfer a lease pursuant
9 to subsection (b) (5) and section 166E-5.

10 Except as provided by subsection (d), the department shall
11 dispose of public lands by lease.

12 (b) In all dispositions, the department shall be subject
13 to the requirements set forth in rules adopted by the board
14 consistent with section 166E-6 and subject to the following:

15 (1) All land and facilities shall be disposed of for
16 purposes of agricultural or aquacultural activities
17 only;

18 (2) Each lessee shall derive a major portion of the
19 lessee's total annual income earned from the lessee's
20 activities on the premises; provided that this
21 restriction shall not apply if:



- 1 (A) Failure to meet the restriction results from
- 2 mental or physical disability or the loss of a
- 3 spouse; or
- 4 (B) The premises are fully used in the production of
- 5 crops or products for which the disposition was
- 6 granted;
- 7 (3) The lessee shall comply with all federal and state
- 8 laws regarding environmental quality control;
- 9 (4) The board shall:
 - 10 (A) Determine the specific uses for which the
 - 11 disposition is intended;
 - 12 (B) Parcel the land into minimum size economic units
 - 13 sufficient for the intended uses;
 - 14 (C) Make, or require the lessee to make, improvements
 - 15 that are required to achieve the intended uses;
 - 16 (D) Set the upset price or lease rent based upon an
 - 17 appraised evaluation of the property value,
 - 18 adjustable to the specified use of the lot;
 - 19 (E) Set the term of the lease that shall be not less
 - 20 than fifteen years nor more than [~~sixty-five~~]



1 fifty years, including any extension granted for
2 mortgage lending or guarantee purposes; and
3 (F) Establish other terms and conditions it deems
4 necessary, including but not limited to
5 restrictions against alienation and provisions
6 for withdrawal by the board; and
7 (5) Any transferee, assignee, or sublessee of a non-
8 agricultural park lease shall first qualify as an
9 applicant under this chapter. For the purpose of this
10 paragraph, any transfer, assignment, sale, or other
11 disposition of any interest, excluding a security
12 interest, by any legal entity that holds a non-
13 agricultural park lease shall be treated as a transfer
14 of the non-agricultural park lease and shall be
15 subject to the approval of the board and to reasonable
16 terms and conditions, consistent with this chapter or
17 rules of the board that the board may deem necessary.
18 No transfer shall be approved by the board if the
19 disposition of the stock or assets or other interest
20 of the legal entity would result in the failure of the



1 entity to qualify for a non-agricultural park land
2 lease.

3 (c) After notice of the breach or default as provided in
4 rules adopted by the board consistent with section 166E-6, a
5 violation of any provision in this section shall be cause for
6 the board to cancel the lease and take possession of the land.

7 (d) The board may issue easements, licenses, permits, and
8 rights-of-entry for uses that are consistent with the purposes
9 for which the lands were set aside or are otherwise subject to
10 the authority of the department pursuant to section 166E-9.

11 (e) For leases issued on or after the effective date of
12 this Act, when the department transfers a lease, the lessee
13 shall be fully compensated for any depreciated cost of
14 improvements and trade fixtures if the bid equals or exceeds
15 that amount. If the bid falls short of the depreciated cost of
16 improvements and trade fixtures, the lessee shall receive the
17 entire bid but no further compensation. The premium, if any,
18 shall be credited to the State.

19 (f) If a lessee seeks a modification of the lease or
20 original plan of development and utilization due to a mental or



1 physical disability or the loss of a spouse, the lessee may
2 submit, within twelve months of the occurrence of the event:

3 (1) Documentation to the department to demonstrate that
4 the lessee is able to resume implementation of the
5 original plan of development and utilization within
6 the following twelve months; or

7 (2) An amended plan of development and utilization for
8 consideration by the department.

9 (g) If a lease is transferred through bequest, devise, or
10 intestate succession, the heir, devisee, or beneficiary shall
11 submit, within twelve months of the death of the lessee:

12 (1) Documentation to the department to demonstrate that
13 the heir, devisee, or beneficiary is able to resume
14 implementation of the original plan of development and
15 utilization within the following twelve months; or

16 (2) An amended plan of development and utilization for
17 consideration by the department.

18 The department shall approve an amended plan only if the
19 plan meets standards with respect to productivity comparable to
20 new leases being issued at that time.



1 If the documentation or amended plan is not satisfactory to
2 the department, the lease shall be terminated at that time.

3 Twenty-four months after the death of the lessee, the
4 department shall review the heir, devisee, or beneficiary's
5 progress toward implementation of the original plan, or the
6 amended plan if one was approved. If the heir, devisee, or
7 beneficiary is not following the original or amended plan of
8 development and utilization, as applicable, the lease shall be
9 terminated at that time."

10 SECTION 4. Section 166E-11, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) [~~The~~] Subject to the requirements of section 166E-8,
13 the department may negotiate and enter into leases with any
14 person who:

- 15 (1) Holds a revocable permit for agricultural purposes;
- 16 (2) Has formerly held an agricultural lease or a holdover
17 lease of public land that expired within the last ten
18 years and has continued to occupy the land; or
- 19 (3) Is determined by the department to have a beneficial
20 impact on agriculture."



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. The revisor of statutes shall insert the
5 effective date of this Act in the appropriate locations in
6 section 3 of this Act.

7 SECTION 7. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect on July 1, 2050.

10



H.B. NO. 1993
H.D. 2

Report Title:

Agricultural Leases; Non-agricultural Park Lands; Disposition

Description:

Modifies requirements and restrictions related to the department of agriculture's dispositions of non-agricultural park lands to maximize the benefit to the State of agricultural lands and to help the State achieve its economic and food production goals. Effective 7/1/2050. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

2022-1648 HB1993 HD2 HMSO

